IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN

AT JODHPUR.

ORDER

RADHEY SHAYAM & ANR. VS. STATE & ORS.
D.B.CIVIL WRIT PETITION No. 1323/2003

SURENDRA GEHLOT VS. STATE & ORS.
D.B. CIVIL WRIT PETITION NO.4829/2002

DILIP BANTHIA VS. STATE & ORS.
D.B. CIVIL WRIT PETITION NO. 108/2004.

Under Articles 226 and 227 of the
Constitution of India.

Date of Order :: July 13, 2005.

PRESENT

HON'BLE MR JUSTICE RAJESH BALIA
HON'BLE MR JUSTICE R.S. CHAUHAN

Mr. S.D. Vyas for petitioner in Writ Pet.No.1323/2003.
Mr. Vijay Bishnoi for petitioner in Writ Pet. No.108/2004.
Mr. L.R. Mehta and }
Mr. Sanjeev Johari } for Surendra Kumar Gehlot -petitioner in Writ Petition No.4829/02 and respondent in other petitions.
Mr. S.L. Jain } for the UIT.
Mr. S.G. Ojha } for Jeewanmal respondent with Jeewanmal present in person.
Mr. B.K. Vyas } for Chandra Prabha Acharya.

BY THE COURT (Per Hon'ble Mr Balia, J.)

These three petitions though filed by different persons with a little different shade in their assertion but the undercurrent of controversy remains the same. It is common grievance in these cases that public property in question (shops Nos. 23, 25 and 26 situated in front of P.B.M. Hospital, Bikaner) is being negotiated and transferred at much lesser price than its market value at the alter of personal interest of the allottees.

To reveal this public facet of these lis, it will be profitable to notice in the first instance the facts coming from petition filed by Sh. Surendra Kumar Gahlot (D.B. Writ Petition No.4829/2002), which perhaps is the beginning point of this litigation.

Certain shops in front of P.B.M. Hospital, Bikaner were auctioned on 27.10.1986. Shri Surendra Kumar Gahlot was the highest bidder for shop No.23 at Rs.1,80,000/- which accounted for Rs.1200/- per Sq.ft. We may notice that these shops were commercial shops for the purpose of carrying on trading activities. Mr. Gahlot deposited 1/4 amount of his bid and remaining amount was to be deposited in installments within the specified period. But as is revealed from other petitions that this bid

was not ultimately accepted inter alia on the ground that the price offered by the bidder was reserve price and was not considered adequate. It has also come on record that during very same auction for Shop No.25, more than Rs.5 Lacs were offered by Smt. Dhanni Devi. The rejection of the bid was conveyed by letter dated 12.10.1988.

However, the shop No.23 was subsequently sought to be given to Smt. Chandra Prabha w/o Raman Lal Acharya in exchange of another shop, situated at Jassusar Gate for which she had bid. She was never the applicant or bidder for shop at site in question.

This led to filing of the writ petition No.1533/95 by said Shri Surendra Kumar Gahlot inter alia on the ground that since he was the highest bidder and his case has been rejected on the ground of being inadequate price, it could not be allotted to someone else and if it were to be allotted in lieu of another shop also auctioned in 1986, he was the highest bidder for the shop No.23, and he had prior claim to be considered. He has also prayed for sale of shop by auction.

During the pendency of the said writ petition,

learned counsel appearing for the Urban Improvement Trust made a statement before the Court that the said shop would not be allotted to any one but would be put to auction. Therefore, on 1.4.99, the petition was dismissed as having become infructuous by recording the statement of Mr.S.L. Jain, learned counsel for the respondents U.I.T. that shop in question has been decided to be put to auction.

Since this statement was not given effect to and the allotment made in favour of Smt.Chandra Prabha was persisted to be confirmed, another writ petition No.3250/2000 was filed by said Shri Surendra Kumar Gahlot which came to be disposed of by order dated 19.9.2000 by permitting Surendra Kumar Gahlot to make a representation of his grievances to the respondents and if such representation was made within 15 days, the respondents would consider the representation in accordance with law and then take steps in accordance with the law.

Rejection of representation made by Mr. Gehlot and confirmation of allotment of shop in favour of Chandra Prabha was subject matter of dispute in earlier writ petition

led to filing of present petition.

Said Mr. Gahlot in this petition contends that between 24.8.2002 to 22.11.2002, his representation was straight way rejected and the allotment by exchange made in favour of Smt. Chandra Prabha was affirmed. This led to filing of writ petition No.4829/2002, in which a prayer was made that the allotment proceedings of the said shop No.23 at Indra Market, PBM Hospital, Bikaner may be quashed and a declaration be made that in view of 1/4 amount already deposited by the petitioner, the shop in question may be kept in favour of the petitioner after taking remaining 3/4 amount.

We may notice that in spite of notice of rejecting the bid and asking the petitioner to get the refund of the deposited amount made by him, the petitioner has not taken the refund.

We are informed after filing of the writ petition, Shri S.K. Gehlot has been allotted Shop No.26 at DLC price. Another petition was filed by one Dilip Banthia being D.B. Civil Writ Petition No.108/2004 after a P.I.L. was preferred by Radhey Shyam and another being D.B. Civil

Writ Petition No.1323/2003.

In Writ Petition No.108/2004 filed by one Dilip Banthiya, allotment of all the Shops Nos. 23, 25 and 26 opposite P.B.M. Hospital, Bikaner have been challenged.

According to Mr. Banthiya's petition, Shops Nos. 23 and 25 have been initially auctioned in 1986. Bid for Shop No.23 by Surendra Kumar Gahlot was Rs.1,80,000/- i.e. to say Rs.1200/- per Sq.ft. but the said bid was not accepted by the competent authority vide letter issued in August 1998 inter alia on the ground that the price was not adequate. He also brought to the notice of the Court that on 4.8.98, the then Minister of Urban Improvement Trust, Rajasthan permitted Smt. Dhanni Bai to pay the remaining installments in one year but by letter dated 25.8.1998, the Government finding that there was no provision for grant of installments for the allotment itself and allotment had already been quashed, it did not countenance the order dated 24.4.98. However, in spite of the above, after seeking a resolution, the U.I.T. decided to seek an undertaking on 14.5.1990. Again, the allotment was cancelled on finding that the amount has not been deposited and ¼ earnest money has been forfeited.

He further alleged that by accepting the application dated 15.11.1991 from two persons, the two shops allotted to them illegally were causing loss to the revenue by permitting those allottees to pay the remaining ¾th price.

We may notice that said Radhey Shyam along with Vijay Kumar are petitioners in the Public Interest Litigation being D.B. Civil Writ Petition No.1323/2003. The two are first cousin being sons of two sisters. They are also nephews of respondent No.5 Jeevanmal, who is their maternal uncle.

From the proceedings of the Urban Improvement Trust, Annexure 5 produced alongwith the writ petition filed by Dilip Banthia, the position which emerges about the allotment made in favour of Smt. Chandra Prabha of Shop No.23 is that said Chandra Prabha has made a bid in the first instance for Shops Nos. 3 and 4 at Jassusar Gate on 16.9.86, which was approved by the Chairman of the Urban Improvement Trust on 22.9.86, but ultimately, the allotment made in favour of Smt. Chandra Prabha was cancelled because of non deposit of the amount and it was again put to auction on 26.7.89. In the second auction, the shops were purchased by two different

persons Mahendra and Ramchandra Vyas. However, Smt. Chandra Prabha commenced some litigation and due to that the bids of Mahendra and Ramchandra Vyas also could not be approved. Therefore, on 12.1.95, the State Government approved the compromise between the parties. According to the compromise, the shop No.3 at Jassusar Gate be retained by Smt. Chandra Prabha and Shop No.23 at P.B.M. Market shall also go to Smt. Chandra Prabha at D.L.C. Rate in lieu of Shop No.4 at Jassusar Gate, which was directed to be unallotted by the State Government on 15.3.96. As on that date, action challenging such exchange was pending in this Court at the instance of Shri S.K. Gahlot and statement about public auction of said shop was made later on in 1997.

However, while the final proceedings in 2001 considering the representation of Shri S.K. Gahlot in terms of directions issued in S.B. Civil Writ Petition No. 3250/2000 dated 19.9.2000 makes reference to the writ petitions filed by Shri Surendra Kumar Gahlot and orders passed thereon and dismissal of the two writ petitions, but very conveniently, it ignored the statement made at Bar by the learned counsel for the Urban Improvement Trust that the shop No.23 shall be disposed by auction and it was

only on this statement being made, the petition was dismissed as having become infructuous. As the allotment of Shop No. 23 in favour of Smt. Chandra Prabha by exchange was made ignoring the fact and relying on the aforesaid compromise somewhere in December 2001 on additional payment of a paltry sum of Rs.92,775/-, which was not only contrary to statement made in the Court on behalf of U.I.T. but was also apparently an act of conferring unjust benefit to Smt. Chandra Prabha by allotting her a Shop No.23 opposite P.B.M. Hospital knowingly at much lower price than it could fetch in market as on that date had it been auctioned as per statement given before the Court on behalf of U.I.T.

There is no dispute between the parties at this stage about the fact that, notwithstanding an undertaking given before this Court in 1997 in S.B. Civil Writ Petition No.1533/1995, and when the adjacent Shop No.24 had been sold in 1996 at an approximate cost of Rs.46,000/- per sq. ft., proposal to allot Shop No.23 to Smt. Chandra Prabha was confirmed and carried out in 2001. These facts speak for themselves that an undue favour was conferred on Smt. Chandra Prabha by giving her shop No.23 in exchange in 2001 of Shop at Jassusar Gate for

which she had made a bid in 1986, price of which was over Rs.25 Lacs at least, if we taken into consideration the price at which the Shop No.24 was sold at the minimum price offered by Jeevan Mal for Shop No.26 in the very near proximity.

From the petition filed by Shri Surendra Kumar Gahlot, it is apparent that he had no grudge against rejection of bid made by him in 1986, because of inadequacy of price and his prayer was to dispose of the shops in question by auction and which prayer was agreed to by U.I.T. Still taking advantage of Chandra Prabha's case, he also applied to get the Shop No.26 allotted to him at the same price which he was offered in the year 1986. Thus, the Shop No.26 has also gone in the like manner by way of favour at far less price to Shri Surendra Kumar Gahlot at the cost of public interest.

The petitioner in Dilip Banthia's case has not been concerned with the earlier proceedings and he has come forward before this Court placing materials relevant to auction of bids about the allotment of the three shops No.23, 25 and 26 at the price they were auctioned in 1986 after 1995 and his prayer has been that all such

surreptitious allotments be cancelled and the shops be put to auction in the public interest for proper realisation of public property.

Lastly, coming to the factual matrix emerging from the petition filed by Radhey Shyam and Vijay Kumar as well as reply submitted by the respondents throwing further murky picture about the grabbing of the public property by personal interest at throw away consideration and indulgence in multiplicity of litigation to give vent to the business rivalries.

Ostensibly, the Public Interest Litigation was filed to quash the allotment of Shop No.26 made in favour of Shri Surendra Kumar Gahlot and to demolish the construction raised by said Surendra Kumar at the instance of Jeevan Mal s/o Sobhag Mal through his sister's sons. The party to the allotment of shop No.25 has been made party respondent No.5. Two petitioners, who are first cousins inter se and related to said Jeevan Mal, who have made offer to buy Shop No.26 at Rs.30 Lacs minimum have used the offer made by Jeevan Mal for laying the foundation for raising this dispute as P.I.L. Said two petitioners are sister's sons of said Jeevan Mal is admitted by counsel for petitioner as well as Jeevan Mal who was

present in Court during hearing and dictation of this Order.

We have noticed earlier that shop No.25 was also initially auctioned in 1986, where the highest bid of the shop No.25 was made by Dhanni Devi, mother of Jeevan Mal for Rs.5,60,000/- and 1/4 amount of the bid came to Rs.1,44,000/- which was deposited on 10.7.86. But the remainder amount could not be deposited in time, therefore, the allotment was cancelled vide order dated 5.7.88 forfeiting the 1/4 amount. On a request made on behalf of said Smt. Dhanni Devi, the order of cancelling the allotment and forfeiting the amount was re-called. The order to that effect was made on 4.8.88 by the Secretary, Urban Improvement Trust and she was directed to deposit the balance amount of Rs.4,44,775/- in 12 instalments within one year. While it speaks about one month's time to deposit the balance amount, but 12 monthly installments were granted to pay the amount alongwith interest. This was contradictory in terms. Be that as it may, it was pointed out that there is no provision in the Rules to grant installments and allotment having already been cancelled, the land cannot be allotted to Smt. Dhanni Devi, on the basis of auction which took place on 27.10.86.

The matter again referred to the Secretary, Urban Improvement Trust for reconsidering the issue and an order was made on 3.4.89 once again to deposit the balance amount alongwith interest amounting to Rs.5,49,573/- forthwith.

However, it appears that this offer was also not availed of, and the Urban Improvement Trust informed the said Smt. Dhanni Devi vide its letter dated 14.5.90 that inspite of giving enough time, the amount of the bid money has not been deposited, consequently, the auction was cancelled and 1/4 amount deposited was ordered to be forfeited. The said Smt. Dhanni Devi was again informed vide letter dated 1.7.90 that it is not possible now to get the amount deposited in terms of the said auction.

In 1991, Radhy Shyam and Raman Lal made an application to the Urban Improvement Trust that the said shop is being allotted on the old price and it should be sold by auction and as a matter of fact, the genuine applicants offered to pay double the price of the same block. In spite of this offer being in hand, the shop No.25 came to be allotted to Jeevan Mal s/o Smt. Dhanni Devi

(since deceased) in 1995 at the same purchase price, at which the bid was made in 1986. However, it is apparent that until 23.11.95 no amount has been deposited when request was made by Smt. Dhanni Devi that she had deposited Rs.4,44,775/- in the Urban Improvement Trust office and sought appropriate permission and documentation. The two petitioners in writ petition No.1323/2003 are none other than two sisters' son of said Jeevan Mal. This clearly makes the petitioners to be highly interested to support Shri Jeevan Mal inasmuch as petition is mainly founded on offer of Rs.30 Lacs made by said Jeevan Mal for shop No.26 and to the detriment of Shri S.K. Gahlot. Said Shri Jeevan Mal has also filed a civil suit against Shri Surendra Kumar Gahlot for cancelling allotment made in his favour and injuncting him from setting up his shop on plot No.26.

These facts have not been disclosed in the petition filed by Radhey Shyam and another but has been brought on record by raising a preliminary objection about the maintainability of Writ as Public Interest Litigation. The civil suit is pending between Jeevan Mal and Surendra Kumar.

Another important fact which emerges from the petition filed by Radhey Shyam is that the shop No.24 adjacent to shops Nos. 23 and 25 was put to auction in 1996 and it fetched Rs.46,200 per sq. ft., (about Rs.21 Lacs) a price much higher than the shop price at which the shop No.25 was allotted to said Jeevan Mal in November 1995 after it has been cancelled more than three times in past for non-payment of money.

The second important fact which has been brought on record by the two petitioners in writ petition No.1323/2003, while challenging the carving out of shop No.26 which was allotted to Surendra Kumar Gahlot after filing of writ petition No.4829/2002 is that Jeevan Mal – respondent No.5 has made offer to purchase the said shop at Rs.30 lacs vide his affidavit dated 3.1.2003 filed alongwith the writ petition.

From the narration of facts, it is apparent that the shops which were auctioned in 1986, for the first time the bid was not accepted either for inadequacy of price offered by Shri Surendra Kumar Gahlot or any of them because of Smt. Dhanni Bai or her son Jeevan Mal were not prepared to deposit the amount of bid at least until

1995. The Urban Improvement Trust has conveyed their unwillingness to accept the bid of Shri Surendra Kumar Gahlot at Rs.1200/- Sq.ft. being too inadequate and had cancelled the bid made by Smt. Dhanni Bai at least three times on she having been failed to deposit the amount, notwithstanding, the chance given to deposit the bid money at the price of 1986.

From the material on record, it is very apparent that by 1995-96 the price of land at the place in question has risen very high inasmuch as a small shop carved out of remodeled shop could fetch price of Rs.21 Lacs in 1996 soon after Jeevan Mal is said to have made the payment for securing the allotment of Shop No.25 at the price level of 1986, for which his mother had made bid in the year 1986 after almost 10 years. Shri Surendra Kumar Gahlot in whose name, the bid was not accepted in 1988 having come to know about the proposal to allot the shop in favour of Smt. Chandra Prabha in exchange of land sold at Jassusar Gate in 1986, had revived his claim by filing a writ petition No.3285/1995 here and challenge the proposal. In response to it, the U.I.T. had made it clear that looking to the circumstances, the U.I.T. had decided to put the shop on auction and not by exchange.

Notwithstanding having made this statement before this Court and getting the petition filed by Shri Surendra Kumar Gahlot dismissed as having become infructuous, the shop was not put to auction but the U.I.T. affirmed the proposal of exchange made in 1996, which was under challenge in the writ petition filed by Shri Surendra Kumar Gahlot in 2003 by charging the D.L.C. price only, which resulted in depositing of additional amount of Rs.99,000/- only. When Shri Surendra Kumar Gahlot challenged the allotment made in favour of Smt. Chandra Prabha by exchange of Shop No.23 finding that the largess conferred on the other persons may not be sustained, his demand was also satisfied by allotting the shop No.26 at D.L.C. rates only, for which Jeevan Mal made an offer of paying Rs.30 Lacs, when he came to know of such allotment.

In these circumstance, it is apparent that the Shops No.23, 24 and 26 all have been made subject matter of largess to different persons by conferring undue favour by allotting public property at archaic price at the time of allotments made in 1995 and 2003 at the cost of public interest. All these allotments cannot be allowed to sustain.

Undoubtedly, the petitioners of the writ petition No.1323/2003 have also not come with the bona fide claim, but come in aid of their maternal uncle Jeevan Mal, who has filed a civil suit for cancelling the allotment made in favour of Shri Surendra Kumar Gahlot for shop No.26 and on the basis of the market price fetched for Shop No.24 and the offer made by Jeevan Mal for Shop N0.26. In these circumstance, it has become very clear that the allotment of respective shops obtained at throw away price at the time when allotments were actually made in their favour, after accepting or cancelling the original offer made in 1986 was a clear case of conferring of stake layers on respective parties to the detriment of public interest and when said Jeevan Mal actually deposited the amount of bid made by Dhanni Devi, the price of shop has escalated multiple times. This betrays that Jeevan Mal had no intention to stick to bid made by Dhanni Devi in 1986 but finally when price of shop had risen more than 20 Lacs, he too in conjunction with power that may be got himself Shop No.25 at 1986 price to the detriment of public interest.

With all these backgrounds, allowing any allottees to retain Shop No.23, 25 and 26 at the price at

which it has been allotted shall be detrimental to public interest, which allotment amounts to abuse of power by allotting authority

Keeping in view all the circumstances, consensus amongst the parties was that in the circumstances, validity of the allotment of Shop No.23, 25 and 26 cannot be sustained at the price at which it has been allotted and admittedly the allotments are required to be cancelled and shops be put to re-auction or to devise a mode that State property receives its adequate consideration as on the date allotment was made respectively.

At this juncture, the learned counsel for Jeevan Mal states that instead of cancelling the allotment made in his favour, if the allottee is required to pay a reasonable market price prevalent at the time the allotment was actually made, he shall be prepared to pay the same to retain the shops.

Shri Jeevan Mal made an offer to deposit Rs.30 Lacs in Court and until today he is prepared to pay more than 30 lacs for the shop No.26. However, in Court he had

shown reluctance before depositing Rs.30 Lacs as mark of his bona fide by putting number of additional conditions. Moreover, Shop No.25 was also allotted to Jeevan Mal at the price of 1986, when he himself has not made the bid, the bidder Dhanni Devi has consistently failed to deposit the price in spite of successive opportunities given to her to deposit the amount notwithstanding the approval in her favour was cancelled in 1988 and advance deposit was forfeited.

Jeevan Mal offered to deposit additional sum for retaining the same shop No.25 inasmuch as for last 10 years, he has established a medical shop and has acquired a sizeable good-will of shop. Learned counsel for Shri Surendra Kumar Gahlot too states that keeping in view the offer made by Shri Jeevan Mal, Shri Surendra Kumar Gahlot is ready to pay Rs.32 Lacs for the shop No.26 if the allotment in his favour is not cancelled. It was stated by learned counsel appearing for Smt. Chandra Prabha that she was not in a position to pay the market price of Shop No.23 at present , but she would be satisfied if the shop at at Jassusar Gate is allotted to her where she had originally made the bid and which was accepted in due course.

Learned counsel for the U.I.T. also have no objection if the reasonable market price is received by it and at the same time protecting the interest of the parties, who have established their shops for long time at the respective shops in question. Learned counsel for Mr. Dilip Banthia had also shown his willingness to accept the reasonable solution of the problem if reasonable price is received by the Urban Improvement Trust of the property in question as its claim was only to fetch reasonable price of land at that time when the same was sold or allotted to parties respectively.

For the aforesaid circumstance, these petitions are disposed of with following directions which the respective learned counsel for the parties are aggreed to:

1. That for shop No.26, Shri Surendra Kumar Gahlot shall deposit Rs.32 Lacs as its allotment price to the Urban Improvement Trust, after adjusting the amount already paid by him at the time of allotment of Shop No.26.

2. Shri Jeevan Mal shall deposit the additional amount of Rs. 17,50,000/- for shop No.25 which was allotted to him in the year

1995.

3. Since Smt. Chandra Prabha is not willing to offer the price of Shop No.23 allotment of which was made in her favour by exchange of shop at Jassusar Gate, learned counsel for the Urban Improvement Trust has stated that another shop at Jassusar Gate which is lying vacant shall be allotted to her where she has originally made bid for two shops in the year 1986, out of which only one was allotted to her and in lieu of another questioned allotment was made in the year 2003.

4. The aforesaid amounts shall be paid by the respective parties by 30th September, 2005 to the Urban Improvement Trust, failing which the allotment made to the respective parties shall stand cancelled and the amount already deposited by the parties shall stand forfeited by the Urban Improvement Trust.

In such event, Shops Nos. 25 and 26 shall be vacated by the occupants and the same shall be allotted by public auction.

5. The shop No.23 will again be put to auction at the open market price and it shall not be sold at the lower price, than what price it has been allotted to the respective parties at this stage.

Ordinarily, we would have imposed cost of the petition on the petitioners of the writ petition No.1323/2003, who apparently have used the vehicle of Public Interest Litigation to favour the cause of Shri Jeevan Mal, but looking to the fact that the facts brought on record by them, has ultimately resulted in receiving the maximum money than throw away price and the parties have agreed for making the payment of near full price which it could fetch at the time of allotment to the Urban Improvement Trust. In these circumstance, we deem it just and proper to excuse the petitioners from the cost of petition in writ petition No.1323/2003.

In view of the aforesaid directions, no separate order is passed in writ petition filed by Shri Dilip Banthia.

All the writ petitions stand disposed of in terms of the aforesaid directions.

(R.S. CHAUHAN)J. **(RAJESH BALIA)J**

Anil/